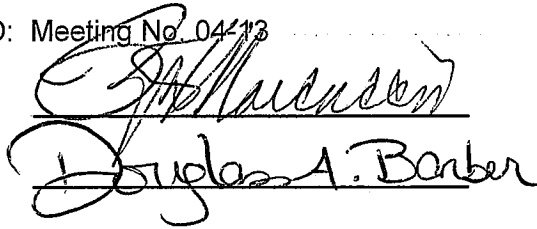


APPROVED: Meeting No. 04413

ATTEST:

  
Douglas A. Barber

MAYOR AND COUNCIL  
ROCKVILLE, MARYLAND

September 24, 2012

7:00 p.m.

Meeting No. 30-12

**Re: Executive Session pursuant to Section 10-508 (a)(7) of the State Government Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding the King Farm Farmstead.**

The Mayor and Council met in Executive Session on Monday, September 24, 2012, at 6:33 p.m. in the Diamondback Terrapin Conference Room, City Hall, 111 Maryland Avenue, Rockville, Maryland

Councilmember Newton made the motion to convene in Executive Session and it was seconded by Councilmember Hall and passed.

Present at the Executive Session were Mayor Phyllis Marcuccio, Councilmember John F. Hall, Jr., Councilmember Tom Moore (arrived at 6:38 p.m.), Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala. Also present were Acting City Manager Jenny Kimball, City Attorney Debra Daniel, Acting Director of Recreation and Parks Christine Henry, and Director of Community Planning and Development Services (CPDS) Susan Swift.

The topic of discussion was King Farm Farmstead.

The Mayor and Council adjourned the Executive Session at 7:04 p.m.

**PRESENT:**

Mayor Phyllis Marcuccio, Councilmember John F. Hall, Jr., Councilmember Tom Moore, Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala

**STAFF PRESENT:**

Acting City Manager Jenny Kimball, City Clerk/Treasurer Doug Barber, and City Attorney Debra Daniel

**1. Convene**

The Mayor and Council convened in a regular meeting at 7:12 p.m. on Monday, September 24, 2012 in City Hall, 111 Maryland Avenue, Rockville, Maryland.

**2. Pledge of Allegiance**

Mayor Marcuccio led the Pledge of Allegiance.

**3. Agenda Review**

City Clerk Doug Barber advised there were some changes from the posted agenda last week. A closed session had been added to the meeting prior to this meeting at 6:30 p.m. Item # 12 was added to the agenda and hard copies have been provided at the dais. City Clerk Barber advised that consent agenda item# 8A has been removed. In response to Councilmember Pierzchala regarding Consent Agenda Item# 8A, Acting City Manager Kimball advised the Mayor and Council that Consent Agenda Item# 8A has been removed due to the purchasing staff acquiring additional information on the item. The item will return to the Mayor and Council at a later date.

**4. City Manager's Report**

Acting City Manager Kimball invited the public to attend one of five Town Hall meetings hosted by the City's Charter Review Commission to discuss the City's election process. Acting City Manager Kimball advised more details are available on the City's website and if individuals were not able to attend the meetings, ideas or comments would be accepted by email or in writing through the City Clerk's office.

**5. Appointments/Reappointments and Announcement of Vacancies**

Mayor Marcuccio announced the reappointment of Scott Robins to the Human Services Advisory Commission as an at-large representative until September 1, 2015.

**Motion:** To reappoint Scott Robins on the Human Services Advisory Commission as an at-large representative until September 1, 2015.

Moved by Councilmember Newton, seconded by Councilmember Pierzchala and unanimously approved.

Mayor Marcuccio read the vacancies for the following Boards and Commissions: Human Rights Commission, Human Services Advisory Commission, Planning Commission, Retirement Board, Sign Review Board, and Traffic and Transportation Commission. Mayor Marcuccio closed by encouraging residents to visit the City's website for information on how to apply.

## **6. Citizens' Forum**

<i>Citizen</i>	<i>Issue</i>
Randi Denberg	Pending sale of Fireside Apartments - concerns
Timothy Foley	Pending sale of Fireside Apartments - concerns
Stuart Bowman	Alley between Mannakee and Nelson Street
Erik Read	Pending sale of Fireside Park Apartments - concerns
Joyce Lipman	Pending sale of Fireside Park Apartments – support
David Brenner	Harassment by Police via Code Enforcement
Sarah Dickinson	Pending sale of Fireside Park Apartments – support
Jim Vitol	Pending sale of Fireside Park Apartments - concerns
Christopher Chang	Pending sale of Fireside Park Apartments - concerns
Cam Woods	Pending sale of Fireside Park Apartments - concerns
Theresa Defino	Pending sale of Fireside Park Apartments - concerns
Michael Broskovski	Pending sale of Fireside Park Apartments - concerns

## **7. Mayor and Council's Response to Citizen's Forum and Announcements**

Mayor Marcuccio	Advised that there would be Discussion and Instruction to staff regarding the Fireside Park Apartments issue. All of the questions, issues, concerns will hopefully be answered. A Public Hearing will take place. City still in the fact finding scheme of things and nothing will be rushed.
Councilmember Newton	Responded to the Fireside Park Apartments issue stating that a Public Hearing has been requested and it will be on October 8. No vote tonight and thanked all for coming tonight and the emails sent.

Councilmember Moore

Responded to the Fireside Park Apartments issue thanking all for coming out tonight. Noted the item has been on the agenda since August 6 and it has not been flying under the radar. Should not be a surprise to anyone. Seems to be a lot of incorrect information and the City is not proposing to buy the property and is not the City's decision. RHE is looking for help with the financing from the City. RHE is planning to maintain exactly what is already there.

Councilmember Hall

Responded to the Fireside Park Apartments issue and thanked Councilmember Moore for his important points and thanked Councilmember Newton and Mayor Marcuccio for their interest.

Councilmember Pierzchala

Responded to the Fireside Park Apartments issue and did receive a few emails about the process with complaints that the issues keep changing. He stated that the changes happen because it is a public process. Councilmember Pierzchala thanked all of those who came to give their concerns and their willingness to have an open mind.

## **8. Consent Agenda**

- A. Contract Award of Invitation for Bid (IFB) 07-13 Entitled "Blanket Order for Dechlorination Tablets" for a Contract Period up to Five Years in the Aggregate Amount not to Exceed \$250,000.
- B. Award of Rider Contract Off of the City of Charlotte, North Carolina, U.S. Communities Co-Operative contract #1101149 for Automotive Parts and Supplies for a Contract Period up to Five (5) years in the Aggregate Amount Not to Exceed \$375,000.

### **C. Approval of Minutes**

January 9, 2012	Meeting No. 1-12
January 23, 2012	Meeting No. 3-12
January 30, 2012	Meeting No. 4-12

Mayor Marcuccio noted that Item# 8A has been removed from the Consent Agenda.

**Motion:** To approve Consent Agenda items 8B and 8C.

Moved by Councilmember Hall, seconded by Councilmember Pierzchala and unanimously approved.

## **9. Public Hearing on Chapter 16 – Ethics Ordinance Revisions**

The Mayor and Council convened in Public Hearing on Chapter 16 – Ethics Ordinance Revisions at 8:03 p.m. Mayor Marcuccio verified with the City Clerk that the public hearing has been properly advertised.

City Attorney Daniel provided a briefing on the proposed amendments to the Ethics Ordinance stating they were introduced to address changes or amendments to the State Ethics Code. Language was added to create a City Ethics Commission which was not required by the State Ethics Code but was proposed as an amendment.

The Mayor and Council heard testimony from the following speakers:

- (1) Theresa Defino
- (2) Judy Miller
- (3) Christina Ginsberg

The complete testimony of the speakers can be found in the official public hearing file of the Mayor and Council in the City Clerk's Office.

Mayor Marcuccio indicated that the public record would remain open until October 5, 2012, at 5:00 p.m.

Mayor Marcuccio thanked all who testified and asked the City Attorney Daniel to provide a synopsis of how the current document was created. Mayor Marcuccio noted that no Committee had been formed up to this point and the document was given to the Mayor and Council for review. City Attorney Daniel noted that the State Ethics Commission puts out model ordinances and the language is based on the model ordinances and in discussions with the State Ethics Commission. Staff recommends keeping the record open until October 5, 2012, and brought back to the Mayor and Council for Discussion and Instructions on October 15, 2012.

Councilmember Newton is happy to support a second public hearing but wants to be sure that the City's Boards and Commissions and salary decision makers have a copy of the draft document so they understand they will be bound by the document as well. She noted that there were some members of the Boards and Commissions that were not aware, that they would also need to follow the statute of the ordinance.

Councilmember Pierzchala supported a second hearing but stated his concern due to a time constraint. City Attorney Daniel noted that if the Mayor and Council propose a second hearing she would be in contact with and inform the State Ethics Commission. Ms. Daniel noted that a few more weeks should not make any difference.

Mayor Marcuccio noted the sentiment for a second public hearing was unanimous and discussion on the next possible date was held settling on October 15, 2012. City Attorney Daniel suggested to those that testified to submit their comments in writing so they can be addressed and stated it was important to get input from the Mayor and Council during Discussion and Instructions to figure out what types of changes the Mayor and Council are

looking for. Mr. Vitol suggested the Mayor and Council schedule a work session with the comments received and then put out a draft final ordinance and then have the public hearing on that document.

Councilmember Pierzchala commented that he was not sure a work session would accomplish what they want and wanted to know the benefit. The ordinance is a State, mandated ordinance which the City can make modifications and he thanked all those that testified for their excellent recommendations. Any further recommendations from this or the second public hearing can be incorporated into a draft document for review at the Discussion and Instructions stage.

Councilmember Hall supported Councilmember Pierzchala's views and is looking forward to as many comments from the public as possible. Councilmember Hall supports a second hearing as he does not feel the public received much information from this public hearing.

Councilmember Moore proposed a schedule of a Public Hearing for October 15, 2012, Discussion and Instructions could be done at the same time, or wait a week to digest what was heard, then take comments, whether officially or not and ask that they be added to the record, then meet back to vote.

Councilmember Newton asked City Attorney Daniel which staff members would be covered by Article Section 16-46. City Attorney Daniel responded that it would be the City Manager, City Attorney, City Clerk and salary decision makers. Councilmember Newton requested that those individuals have a chance to look at the document. Councilmember Moore added they should be invited to attend the Public Hearing.

Councilmember Moore noted the idea is to have a Public Hearing October 15, 2012, along with the Discussion and Instructions, take public comments for two additional weeks and have them added to the record, and then pass it. Councilmember Moore thanked Mr. Vitol for the idea. Councilmember Pierzchala urged all citizens to submit their written testimony ahead of giving it verbally. City Attorney Daniel made a correction in that the State Ethics Commission would want to review and approve the document before the Mayor and Council adopt the document. So what they are asking is that after D&I and after Introduction, the Mayor and Council might want to take a look at the final version of the document, then it would be forwarded to the State Ethics Commission for review and approval before the Mayor and Council adopted it.

Mayor Marcuccio instructed the City Attorney to make a calendar of the steps that were agreed upon. Ms. Daniel responded that the proposed next steps would be in the agenda item that would come to the Mayor and Council for the next Public Hearing on October 15.

There being no other persons wishing to speak, the Mayor and Council closed the public hearing at 8:47 p.m.

**10. Public Hearing on Community Needs and Priorities for Rockville's Upcoming Application for Community Development Block Grant funds (CDBG Program Year 39/FY14)**

The Mayor and Council convened in Public Hearing on Community Needs and Priorities for Rockville's Upcoming Application for Community Development Block Grant funds (CDBG Program Year 39/FY14) at 8:47 p.m. Mayor Marcuccio verified with the City Clerk that the public hearing had been properly advertised.

Erin Wilson, City Housing Planner, addressed the Mayor and Council with a brief introduction and provided an overview of the next steps in the process.

The Mayor and Council heard testimony from the following speakers:

- (1) Mr. Jim Booker, Case Manager for Jefferson House
- (2) Ms. Ruth O'Sullivan, Executive Director, Rockville Housing Enterprise's

The complete testimony of the speakers can be found in the official public hearing file of the Mayor and Council in the City Clerk's Office.

Mayor Marcuccio indicated that the public record would remain open until October 3, 2012, at 5:00 p.m., and encouraged citizens to get their comments in by that time.

There being no other persons wishing to speak, the Mayor and Council closed the public hearing at 8:58 p.m.

**11. Introduction of Ordinance to Approve Zoning Text Amendment TXT2012-00232, to Allow Certain Signs not currently Permitted by Article 18 of the Zoning Ordinance to be Utilized in Certain Planned Development (PD) Zones; Federal Realty Investment Trust, applicant**

Zoning Administrator Mellander addressed the Mayor and Council on the proposed introduction to an ordinance to approve Text Amendment TXT2012-00232. The Text Amendment was filed by Federal Realty for the purpose of adding signs not currently permitted under the sign ordinance of the Zoning Ordinance. The draft Text Amendment was modified to delete the provision allowing the sign to extend above the roof top as the applicant has determined the sign can be moved below the roof and for the proposed monument sign on the adjoining property where a provision has been added to require approval of the design and location of the sign by the Mayor and Council.

There was discussion and explanation regarding the rooftop sign and it being placed under the roof parapet edge. Mr. Mellander noted that the sign was intended to be lighted. There was further discussion and clarification on the monument sign portion of the text amendment.

Councilmember Newton addressed Mr. Clayton Foulger of Foulger-Pratt about the change in the artwork for the piece that was to go next to Mr. Foulger's building and whether or not he was fine with the change. Mr. Foulger noted the discussion that was done at the last meeting and the concern as to whether the not the art was indeed art or a sign. Mr. Foulger stated he made

a commitment to come up with a piece of art at the corner of 355 and east Middle Lane as a condition of occupancy. Mr. Foulger mentioned his experience in designing a piece in Silver Spring at the corner of Colesville Road and Georgia Avenue to help identify what was located at the site and his excitement at being able to do the same in Rockville and thought it was a good idea to include that sort of identification to draw people to Rockville. Mr. Foulger explained that the way they read the interpretation in the code, it could be read in a way to allow the art, allow the identification to consider it art and not a sign.

There was lengthy discussion on the Publicly Accessible Art in Public Places ordinance and its relation to what is being proposed. Councilmember Pierzchala inquired of Mr. Foulger if the ordinance adopted as proposed would provide him the flexibility needed with respect to his decision making on art versus sign issue. Mr. Foulger stated it would be a concern and would need to be reviewed.

The Mayor and Council altered the ordinance by deleting two paragraphs under the Ordinance at 25.18.18(a)(1)(iii).

**Motion:** To amend the introduced ordinance to strike subparagraphs iii beginning with the words "One (1)" in the first subparagraph and "The" in the second subparagraph.

Moved by Councilmember Hall, seconded by Councilmember Pierzchala, and unanimously approved.

**Motion:** To waive the layover period.

Moved by Councilmember Moore, seconded by Councilmember Pierzchala, and unanimously approved.

**Motion:** To adopt the ordinance.

Moved by Councilmember Moore, seconded by Councilmember Hall, and unanimously approved.

**Note for the Record:** Mayor and Council took a five minute break at 9:34 p.m. The Mayor and Council reconvened the meeting at 9:40 p.m.

**12. Discussion and Instructions – Update on the Consideration of City Support for Rockville Housing Enterprise’s Acquisition of Fireside Park Apartments to Preserve Mixed-Income, Affordable Rental Housing in the City of Rockville**

Erin Wilson, City Housing Planner, presented a briefing with background information on the project. Rockville Housing Enterprises (RHE) provided a handout that was available at the back of the Chambers which provided information about the intentions for the property. Since the September 10, 2012, presentation, Ms. Wilson noted that RHE has refined their proposed plan for the property and RHE and Cornerstone would be providing the details. Ms. Wilson stated that the requirement for the City to be a guarantor is no longer required since RHE’s standing as an organization was satisfactory according to the lender. A new request from RHE is their intent



to request relief or forgiveness from their payment in lieu of taxes (pilot payment) for the property.

RHE is requesting \$2 million from the City, the vast majority in the form of a loan, or possibly the entire amount in the form of a loan which would help with acquisition of the property. The forgiveness/relief from the pilot payment would need to be re-requested each year. As a reminder, Ms. Wilson stated the County was also in the process of considering a loan request of \$2.8 million. Ms. Wilson noted that the County will only contribute if RHE and the City put up the money in a loan of some kind to the acquisition in the amount of a match of \$2.5 million. Ms. Wilson summarized the three requests before the Mayor and Council:

1. Consider committing \$1.5 million from the FY 2013 budget as a loan to RHE;
2. Consider committing \$500,000 of the City's Housing Opportunities Fund to RHE as a partial grant and partial loan; and
3. Consider approving an ongoing real property tax exemption for 100% of Fireside Park's property tax liability.

Ms. Ruth O'Sullivan, Director of RHE, addressed the Mayor and Council and provided additional background information and stated she would hope to clarify any of the confusion that has been circulated. RHE will stick with the 60/40 ratio because its intention in seven years is to refinance the property with tax credits, the IRS Housing Tax Credit Program that requires them to have 40% moderate income housing.

Ms. O'Sullivan stated that a question arose as to what would keep the ratio at 40 from creeping up to a ratio of 42 or 45 and she responded that the project would cross subsidize. If RHE does not keep it at the 60% market, they would not have enough money to operate the 40% moderate income units. The goal of RHE is have a mixed income property. RHE has no intention of putting low income families in the units which are provided by RHE's other managed properties that are HUD funded and RHE must put in low income renters.

The Mayor expressed concern about the City of Rockville getting in the housing subsidy business if the loan was approved. Ms. O'Sullivan responded that the City would not be subsidizing but assisting RHE to acquire a property that would not be subsidized in any way. Any profits generated by the market would be invested to keep the other rents lower. The Mayor went on to point out that if the City invests in this project, the City would lose \$60,000 a year which the City would need to find elsewhere to balance its budget and the lack of tax is a serious issue for the City.

Mr. Brian Kim, of Cornerstone, noted that the matter before the Mayor and Council is not a subsidy but a loan agreement that has a payment plan to include interest payment and paying down the principal that would cover a seven year period. Councilmember Moore wanted to clarify that this was a seven year loan and that the City would get all of its money back at the end of seven years plus 3% interest. Mr. Kim confirmed it was just that. The Mayor asked if the City would be getting the taxes back after the seven years and Mr. Kim responded it would be negotiable between RHE and the Mayor and Council.

Mr. Kim went on to give the Mayor and Council an overview of the demographics of Fireside Park and made a detailed presentation, in particular on the financial aspect. Mr. Kim explained that Cornerstone is planning to put into the rehabilitation of the property approximately \$765,000, and by putting that into the development budget, it will not have the negative impact to the existing residents. Mr. Kim went on to clarify some questions asked by the Mayor and Council, in particular the rents currently being paid. Councilmember Pierzchala wanted to know if the guarantee of 60/40 split could be imbedded in the loan. Ms. O'Sullivan confirmed it absolutely could.

Councilmember Pierzchala also inquired as to RHE's policy on crime and drugs, etc. Ms. O'Sullivan responded that RHE properties operate under a very strict screening criteria where criminal background checks are made on all residents when they come into the program and every year thereafter. RHE works very closely with the City of Rockville Police Department. The lease is strictly enforced and residents would be evicted or terminated from the program if there is criminal activity and assured the Mayor and Council that would also apply to Fireside Park.

Councilmember Moore inquired of Ms. O'Sullivan if the City forgave 40% of the taxes under the PILOT program, could RHE make the numbers work. Ruth O'Sullivan responded she thought it was possible and mentioned negotiating a gradual increase across the years. Mr. Kim mentioned there were other ways to accomplish the PILOT Agreement to get to the same point without hindering the underwriting process.

Mayor Marcuccio asked if there were other expenses the City would have to cover like trash pick up and Ms. O'Sullivan responded that would not be the case. Ms. O'Sullivan further stated that RHE had every intention of operating the project like a private organization, except RHE is not a private company.

Councilmember Pierzchala wanted to know the timing now of this item. He mentioned that at one time a decision needed to be made by October 1 and he had concerns about the public hearing being held in time. Ruth O'Sullivan stated that as of today, the clock has not started. The County has signed the contract but the seller has not. Until the seller agrees to the County's contract, the clock does not start. The clock for due diligence starts 30 days from the time of the seller signing the contract. The signing of the contract between the County and the seller was at a stalemate. Ms. Wilson responded that the County has sixty days to decide whether or not they will exercise the right of first refusal and there is time to accommodate a public hearing.

Councilmember Moore asked if anything about the purchase of Fireside by RHE would change the number of school-age children already living there. Ms. O'Sullivan assured the Mayor and Council that would not be an issue. Further questions of clarification were made and responded to.

Councilmember Pierzchala suggested staff go back and mark up the numbers for future impacts on future budgets and that information could be available for the public hearing. Councilmember Pierzchala wanted a formal vote by the Mayor and Council to go ahead with the public hearing.

**Motion:** To hold a public hearing on the RHE purchase of Fireside Apartments and put on the agenda for October 8, 2012.

Moved by Councilmember Newton, seconded by Councilmember Hall and unanimously approved.

Councilmember Newton requested that the powerpoint presentation be put on the City's website for the public. Ms. Newton also commented that the City's outreach on this issue has not been done very well and suggested getting the word out on the Public Hearing right away. Acting City Manager Kimball confirmed that the City has begun reaching out to the neighborhood in the vicinity of Fireside Park Apartments the first week of August when it came to the City's attention. Ms. Newton also requested numbers of the affordable housing in Rockville as well as the percentage of affordable housing in the area. Councilmember Newton further requested that staff relay the conditions the Mayor and Council could put forth on the loan agreement to ensure the City is covered in all aspects.

### **13. Review and Comment on Fourth Quarter FY2012 Financial Report**

Stacey Webster, Budget and Finance Manager, provided the staff report to the Mayor and Council. She noted the change to the Fund Balance reserve requirement calculation and provided some background information and what would be done going forward. Ms. Webster stated that the definition of the fund balance has changed and that is one of the reasons why the balance shows lower than in previous years.

Another item addressed by Ms. Webster deals with the overall General Fund Revenue and Expenditure budgets and one way the General Fund is managed during the year is to manage it based on a performance measure. Stacey Webster also discussed the City Manager's contingency account and stated the entire budget was spent on six items:

1. Host for "111 Maryland Ave." program
2. Recruitment for City Manager position
3. Hurricane Irene clean-up costs
4. Settlement of REDI common area maintenance (CAM) charges
5. Personnel investigation
6. Legal fees

Ms. Webster noted the last item for discussion was the new report format for FY 2013 and that this report would be the last received in its current format. The new report format will compare numbers to the last year's numbers at the same time and then compare it to the targets and cash balances and hopes when presented to the Mayor and Council, they will find it user friendly.

Ms. Webster responded to questions and provided clarification on the report. Councilmember Newton asked if the new report would give the Mayor and Council a calculation of compliance with numerically measured financial policies like the debt per capita, etc. Ms. Webster responded that it was not going to be included because it does not change throughout the year, but they could have the same statistics as shown in the budget book to have them all in one place.

Councilmember Newton stated that the City surpassed the debt per capita one year without knowing and it would be good for the Mayor and Council to know where they are.

Councilmember Newton requested from staff the recruitment cost for the new City Manager and suggested hiring be held off for all positions, not just department director positions currently vacant.

#### **14. Review and Comment Regarding Mayor and Council Action Report**

Councilmember Newton asked staff about the Town Center Redevelopment Text Amendment and Acting City Manager responded that it was in progress and something would be provided to the Mayor and Council as soon as it was ready, hopefully by October 1, 2012.

#### **15. Review and Comment Regarding Future Agendas**

Councilmember Newton inquired if Item #14 was coming off the agenda for October 1 based on this evening's vote to have a Public Hearing. Acting City Manager Kimball confirmed that was correct and stated that all items requested would be provided before the Public Hearing.

#### **16. Mayor and Council Liaisons to Boards and Commissions Report**

Mayor Marcuccio mentioned Victory Housing and American Legion's renovation funded by Home Depot. Councilmember Newton thanked staff for help with the Maryland Municipal League (MML) Montgomery County Chapter meeting and noted the Town Center Event on the F. Scott Fitzgerald program. Councilmember Moore participated in the Salute to Non Profits at the Farmers Market attended by 19 non-profit groups.

#### **17. Old/New Business**

Councilmember Pierzchala noted that this meeting was Acting City Manager Kimball's last meeting as Acting City Manager and expressed the Mayor and Council's appreciation for the past 10 months and for her services.

Councilmember Pierzchala noted the policy on not having citizens do powerpoint presentations and wants the City to revisit that policy. Councilmember Pierzchala inquired of the Department of Public Works how far the City is behind in becoming No. 1 in recycling. He noted how proud citizens were that we are No. 2, but would like to be No. 1.

**18. Adjournment**

There being no further business, the meeting adjourned at 11:53 p.m.

**Motion:** To adjourn.

Moved by Councilmember Newton, seconded by Councilmember Pierzchala and unanimously approved.